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HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF HUMAN RIGHTS INSTRUMENTS

Implications of full funding for the operation of all human rights treaty bodies

Report of the Secretary-General

I. INTRODUCTION

1. In its resolution 45/85 of 14 December 1990, the General Assembly, inter alia, noted with interest that the meeting of persons chairing the human rights treaty bodies recommended in October 1990 that the General Assembly take appropriate measures to ensure the financing of each of the committees from the United Nations regular budget (see A/45/636, annex, para. 15), requested the Secretary-General to report on the question to the Commission at its forty-seventh session and to the General Assembly at its forty-sixth session and decided to give priority consideration at its forty-sixth session to the conclusions and recommendations of the meetings of persons chairing treaty bodies, in the light of the deliberations of the Commission on Human Rights, under the item entitled "Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to such instruments". The present report is submitted in response to that request.

II. BACKGROUND

2. At present there are seven international human rights instruments in force that provide for monitoring of treaty implementation by expert bodies. These instruments and their respective treaty bodies are listed below:

Instrument	Treaty body
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights
International Covenant on Civil and Political Rights	Human Rights Committee
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture
Convention on the Rights of the Child	Committee on the Rights of the Child
International Convention on the Suppression and Punishment of the Crime of Apartheid	Group of Three

3. While the activities of five of these treaty bodies are fully funded from the regular budget of the United Nations, those of the Committee on the Elimination of Racial Discrimination and the Committee against Torture are funded by the United Nations only partially or not at all. Accordingly, the two committees depend, for the effective discharge of their mandates, on the timely payment by the States parties to these instruments of the contributions they are obliged to provide for that purpose under the terms of the respective treaties.

4. It may be recalled that the delayed payment or non-payment of such assessments by a significant number of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination has disturbed the operations of the Committee on the Elimination of Racial Discrimination for several years and has given rise to widespread concern about the ability of that Committee to carry out its important responsibilities in a normal and efficient manner. Those concerns and the possibility that the Committee against Torture may also come to experience similar difficulties in the future have led both the third meeting of the persons chairing the human rights treaty bodies, in October 1990, and the independent expert who carried out a study on "Possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments" (A/44/668), to recommend that consideration should be given to providing full funding from the regular budget of the United Nations for the operations of all treaty bodies.

5. In paragraph 12 of its resolution 1991/20 of 1 March 1991, the Commission on Human Rights noted with interest "the recommendation of the third meeting of persons chairing the human rights treaty bodies and by the independent expert in his report on possible long-term approaches that the General Assembly should, as a matter of the highest priority, ensure the financing of the human rights treaty bodies from the regular budget of the United Nations". In paragraph 14 of the same resolution, the Commission requested the Secretary-General "to submit to the General Assembly at its forty-sixth session a report examining the financial, legal and other implications of providing full funding for the operation of all human rights treaty bodies".

III. LEGAL IMPLICATIONS

6. As indicated in the study by the independent expert, torture and racial discrimination are each classified by virtually all authorities as relating to "a rule of general international law binding upon all States". The expert notes further that "most authorities ... characterize the prohibitions against both torture and racial discrimination as peremptory norms (jus cogens) from which no derogation is permissible" and he recalls that the International Court of Justice had characterized racial discrimination (and by inference also torture) as giving rise to obligations of such fundamental importance that "'all States can be held to have a legal interest in their protection; they are obligations erga omnes'". Accordingly, in the view of the independent expert, it is possible to make "a very strong argument in favour of the proposition that all States have an interest in ensuring the effective functioning" of the two treaty bodies in question (see A/44/668, para. 82). The view expressed by the independent expert seems to justify, from a legal standpoint, the recommendation made by the meeting of persons chairing human rights treaty bodies concerning the provision of regular budget funding for the two bodies.

7. Notwithstanding the fact that regular budget funding may be regarded as justifiable, pursuant to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination and article 17, paragraph 7, and article 18, paragraph 5, of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, it is the respective States parties to the two treaties who are responsible for some or all of the expenses associated with the operations of the two committees. Given the injunction of article 26 of the Vienna Convention on the Law of Treaties that "every treaty in force is binding upon the parties to it and must be performed by them in good faith", States cannot be absolved of their financial obligations under the relevant treaties. It would appear, therefore, that it would be necessary to invoke the amendment provisions in the two treaties if responsibility or funding the activities of the two bodies were to be formally vested in the United Nations.

8. Article 23 of the International Convention on the Elimination of All Forms of Racial Discrimination contains the following provisions:

"1. A request for the revision of this Convention may be made at any time by any State party by means of a notification in writing addressed to the Secretary-General of the United Nations.

"2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request."

9. The comparable provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment set out the following procedure, in article 29:

"1. Any State party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States parties with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted by the Secretary-General to all the States parties for acceptance.

"2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

"3. When amendments enter into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted."

IV. CONCLUSION

10. Should the General Assembly decide that all conventions in this area should be financed from the regular budget of the United Nations, a statement of programme budget implications would be submitted.